
MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON ETHICS

Call to Order: By **CHAIRMAN AL BISHOP**, on February 2, 1999 at
8:45 A.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. John C. Bohlinger, Vice Chairman (R)
Sen. Mike Halligan (D)
Sen. Linda Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Martha McGee, Committee Secretary
Greg Petesch, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 12 1/28/1999
Executive Action: none

HEARING ON SB 12

Sponsor: SEN. MIKE HALLIGAN, SD.34, Missoula

Proponents: Deborah Smith, Montana Common Cause

Opponents: None

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, Missoula, said **SB 12** today tries to
address an issue that we have wrangled with in the Legislature
for as long as he could remember. That is conflicts of interest

a legislator may have and the issue of voting on those issues whether you are in committee or on the Floor. Some of you may recall that we have had ethics bills in before. There were many of sticking points in those bills. One of the items that was the toughest for us to decide was what should we do with respect to requiring votes on bills. It is his opinion, along with the Legislative Improvement Committees' opinion and the Legislative Council working on during the interim for the last 18 months, that accountability in a citizen legislature can be balanced by requiring votes.

When he goes home, he wants to be able to say he has voted on everything, even if he had a potential conflict of interest on something. What he could do, even if they didn't allow that, was have the right to be able to say, "well, I would have voted a certain way on something, you know whether it's an expenditure of something, or an abortion bill or tax bill, or something like that." The Senators have been doing this for as long as they have been here. They have been required to vote if you are anywhere in the Capitol Building. Only if you are excused and out of the Capitol Building are you not allowed or required to vote. They always thought this was an excellent rule.

He remembers only a few times in 18 years; one example is when **Senator Fritz** stood up on the Education budget with the University System or maybe a retirement bill, and said it would in fact increase his retirement or his pay. Therefore, he may have a conflict of interest.

He explained the last page of the bill indicates that a legislator shall disclose in subparagraph 5, there is an interest creating a conflict, as provided in the rules of the legislature. A legislator who is a member of a profession, occupation, or class affected, and if you need to, a legislator may seek a determination from the appropriate committee provided for in 2-2-135.

He said it was a delicate balance, but he thought the overriding concern was accountability, and accountability comes with voting. An example is business people coming from the community that are elected to office, They are going to go on the Business committee probably because we have to be able to get up to speed running on issues. The lawyers go on Judiciary, farmers go on Agriculture and there is going to be natural conflicts created which are a part of the citizen legislative process. This still is the healthiest and most balanced way to go, to require votes. It's not a big issue for us in the Senate because we have always done it this way. It will be a big matter when we get to the House of Representatives and that's where he expects most of the

debate to be. He didn't know if there was anybody present to testify on the bill.

Proponents' Testimony:

Debbie Smith, Attorney, Montana Common Cause, said she worked with legislators a couple of sessions ago who sponsored various versions of ethics bills that eventually passed that session. She stated that she agrees with **SEN. HALLIGAN**. In the bill that eventually passed there was not one section that was not extensively debated and this bill was one of them. The position of good government advocacy groups, was and still is, where a legislator has a significant conflict of interest, especially in an area where there could be great pecuniary benefit or detriment to the legislature from voting. That legislator should abstain from voting. She is very sensitive and **Common Cause** is very sensitive to the balance that must be struck in a citizen legislature and to the accountability that those legislators owe to their constituents to vote on important issues of the day.

Common Cause does not believe that a legislator, any legislator, should be able to skirt a vote on a controversial issue because he or she wants to allege some sort of conflict of interest that may be some thing less than a great concern. This is the thing that **Common Cause** is most concerned about. She wondered if there was some sort of middle ground that could be reached. They were comfortable over all with the ethics bill that was passed, by an overwhelming majority in both houses, two sessions ago. One of the compromises that was reached was the **House** would continue to follow its rules. The **Senate** would follow its rules, both required, disclosure of conflicts of interest. The **Senate** which is the smaller body, you have to vote. The **House** requires disclosure and not to vote. That was something overall that they were comfortable with. This bill changes that.

This bill highlights one particular provision. It says that even though you may have a very grave conflict of interest that you could benefit by to a signifant degree, you shall vote. We think this causes some concern in a time when there is some distrust of government in our state and in the nation. We think the things that legislators can do to avoid the appearance of impropriety are wise actions to take. Certainly with regard to the current **Senate** rule, they have justified that very well in terms of being a smaller body. You need everyone to vote.

However, current procedure works well in the **House**, that would make Common Cause somewhat of an opponent to this bill. She asked if there is some middle ground, that requires disclosure of a conflict of interest. Maybe that's the issue. Maybe there haven't

been disclosure of conflicts that could be reported in the paper. So the people would know and that there is a way to get around the skirting of voting issues. She thought it was wrong for the legislature to require votes when there may be very significant consequences.

Opponents' Testimony: **NONE**

Questions from Committee Members and Responses:

SEN. NELSON remarked to **SEN. HALLIGAN** she liked what he was trying to do, but thought it didn't go quite far enough. In the **Senate** they are required to vote. In the **House** they managed to just sort of disappear, or a lot of times they just don't disappear, they are just simply sitting at their seat when they don't vote. She wasn't sure that this bill really gets at that because these people don't necessary have a direct conflict of interest. Maybe it makes them uncomfortable, so they don't vote. This doesn't address that.

SEN. HALLIGAN answered no it does not and that is an issue. They do allow it for some reason. **Greg Petesch** could help us here with respect to the rule they use to do that, perhaps it is only on second and third reading, when they are allowed to walk on votes and not be there. He couldn't answer her question whether their rule allows that. Our rules certainly don't.

Greg Petesch, Director, Legal Services Office, Legislative Services Division, replied the **House** rules don't specifically authorize that. It is a practice in the **House** that has been acceptable. Certainly the purpose of this bill is to statutorily require legislators to vote.

Since he also staffs the **House Ethics Committee**, this section was already used once in the **House** this session. He thought it is important to see how this would work in context. The requirement for disclosure of that very narrow conflict occurred at the first **House Ethics Committee** meeting. That was in a case in which there was a bill to grant two new exempt positions to the Board of Investments. Now having a position exempt under statute means you are eligible for a lot more salary. **REP. DAVID EWER** came to the **House Ethics Committee** and told them he was potentially one of the four people who could get these 2 new positions that are being created. This could mean a lot money for me and he was real uncomfortable. The **House Ethics Committee** said, yes, this is the type of narrow conflict that we want disclosure on. They advised him to disclose. **Greg** didn't know whether **REP. EWER** voted on that issue or not. Under the current **House** rule at that

point, he was allowed to disclose and then abstain, which was what he wanted to do at that point. We talked about this bill in that committee and we said, when this bill is passed, you will still be required to make that disclosure, but then you are going to have to vote. So that was clearly discussed in the **House** and the **House Ethics Committee** is aware, if this bill is passed, that the person in the Chamber will be required to vote. He thinks that is how they discussed it in the **House**, and believes that is how they would implement it.

SEN. HALLIGAN asked **Deborah Smith**, what if we just tried to focus it and the issue that was just raised here. Where potentially there is pecuniary benefit of finances to an individual member from a bill and to allow the **House** to have some leeway there. It takes some awfully creative language to do that. Also is it your concern with any of the issues raised by **SEN. NELSON'S** question, that they are allowed to literally walk on every or any bill, just not to vote, on second and third reading?

SENATORS and Greg Petesch answered affirmative.

Deborah Smith stated that **SEN. NELSON** brought up very good issues. She thinks from **Common Causes** point of view, of equal concern are the legislators that don't vote on controversial issues. Their constituents aren't being represented. Period. They have no voice. She will put some more thought into this. She can think of no other area other than when there could be direct pecuniary benefit to a legislator when you wouldn't want that legislator to vote on something.

For example, she was not sure if **REP. EWER'S** constituents would loose out if **REP. EWER** abstained from voting on that particular bill. She is comfortable with the situation that **Greg Petesch** described for the **House**. She would suggest the process needs to remain in place. However, if it is left up to the discretion of the individual legislator on whether to vote or not after a mandatory disclosure of a conflict, then it is up to the legislator to justify to his or her constituents why he or she didn't vote.

SEN. BOHLINGER recalled during his three terms in the **House** only one occasion when someone stood and said, I have a conflict of interest. It was during last session, when **REP. CHASE HIBBARD** stood before the body and said, I am a member of the Board of Directors of the Montana Power Company and a stockholder of the company. He felt he should tell the body of his investment and his position with this company. He just didn't feel he could vote on this deregulation bill.

SEN. BOHLINGER said this sort of disclosure is important, but he really doesn't feel that they serve the people that elect them, when they duck those hard votes. People wouldn't even walk. They would just sit there at their desk and not push the button. It is as though they were asleep. This is irresponsible. If they think they are serving the people that elect them, they are wrong. He wants to close this door on that opportunity. He thinks what **SEN. HALLIGAN** is proposing here is very important and he would like to see it brought forward.

SEN. NELSON remarked that she would suggest a possible amendment that maybe could go on line 15, following the word legislator. If you added the sentence, " a legislator shall vote on all issues before the Committee of the Whole, unless they are listed as absent, or excused." She asked if this would get at this business.

SEN. HALLIGAN asked if absent is different than excused. If you are presenting a bill in the **Senate** you are excused, out of the Capitol for the day, or something like that. Is that defined.

Greg Petesch responded those are not defined in the rules or in the statute. Obviously those types of things when you are **not present** in the Committee of the Whole, is considered being absent to him. Un-excused, is when you have given advance notice that you are going to be gone for a period of time.

SEN. BOHLINGER stated that absent could be loosely interpreted so if a person wanted to avoid taking the hard vote. They could just go to the mens room, or to the ladies room and not be present. He thinks that is taking a walk and he doesn't think they want to allow it.

SEN. NELSON stated she knows there is still some leeway in this, but she thought it might be tightened a little. It would present the opportunity for more of them to talk about it even at a caucus, or in front of the body. It kind of indicates to them, they are expected to vote. It is different if you are really absent, truly absent, not just absent from your desk. This is why she wanted to run it by them.

SEN. HALLIGAN answered in the context of **SEN. BOHLINGER'S** question to **Debbie Smith**. The issue he raised about the electric utility deregulation, was a classic example of a non-pecuniary benefit along with a controversial issue. This is where clearly we can go home in hind sight saying, the deregulation went badly, I wouldn't have voted for that, or whatever. We have got to have their vote on the record, up or down as long as you are in session. This is where he would want that disclosure and the

vote. He asked if they disagreed with that. He asked what **Common Causes** response would be on that kind of a scenario.

Deborah Smith stated that is the trickiest situation that you are trying to write the law for. **Common Cause** believes where there is even the potential for direct pecuniary benefit, those legislators should disclose the conflict and then abstain from voting. She thought there is a way. For example, **REP. HIBBARD** could have contributed very much to the Floor debate.

For example he could have indicated what his constituents beliefs were, for or against. She knows that **REP. HIBBARD** is a person of high integrity, both as a legislator and as a person. He is a good example of what a legislator should be. Making his constituents aware, yes, I am a member of the Montana Power Board of Directors. He doesn't make any attempt to hide that. Those constituents should also know, that if you elect me, I'm not going to be able to participate in the final vote on this matter.

This is a very difficult situation for the legislature to decide. However, in which ever way you decide, you could justify it. But from a good government point of view, the citizen groups are concerned, especially when potentially vast amounts of money are involved or a lot of Montana on a Montana scale. There's a bad public perception of voting on something and then you have some financial benefit.

SEN. BISHOP stated that he noticed one thing when she was talking a bit ago, she said "significant interest." So there are varying degrees of interest then. Where do you start?

Deborah Smith answered you know these are exactly the kinds of things that the committee that worked on the ethics bill struggled with. How much is significant. In terms of financial disclosure, where do you have to disclose. Where do you draw the line. You could impose an arbitrary line. She remembers speaking with **SEN. GROSFIELD** about a cut off line for something and they discussed a sum of \$20,000. If you have more than \$20,000 in stocks or property interest in some thing, then that is something your constituents may want to know about. But your questions about if you said just financial interest and then qualified it some how, it could prohibit any rancher-farmer from voting on an agriculture bill. It could really go too far. So you could pick what you considered to be an appropriate monetary amount. You could use a vague, somewhat vague word, like significant, or substantial and leave it up to the **Ethics Committee** process, or the individual legislator. She thinks either way you went, maybe actually the vague way is a better

way. That way as inflation changed and things like that, you wouldn't have to deal with changing the dollar amount.

SEN. BOHLINGER stated let one's conscience speak.

SEN. HALLIGAN asked if they have enough room in the title to do anything like that.

Greg Petesch answered he thought this bill was crafted for a very narrow specific purpose and that was to require the **House** to conform to **Senate** practice. He thinks that **SEN. NELSON'S** amendment would be proper because it still requires a legislator to vote. Anything other than that, he believes would change the original purpose of the bill.

SEN. HALLIGAN asked if it was possible to do a Committee bill from the **Ethics Committee** that would leave this bill tabled or something. Craft a title that would cover what they are talking about today, include not only **SEN. NELSON'S** issue, maybe without specifically that we'd want to strike the **House** rule. Maybe paragraph sub 5 needs to be significant, direct pecuniary interest. Then if it gets to the **REP. EWER** situation or it gets to the **REP. CHASE HIBBARD** situation you would still want to be able to disclose to an **Ethics Committee**. Then have them give you some opinions as to whether you ought to abstain or not, but still allow for those rare cases where abstaining might be the good government thing to do.

SEN. BISHOP asked about the rest of the committee. He asked **SEN. BOHLINGER, SEN. NELSON** how they feel about a committee bill. He thought that committee bills had to be out by February 13, 1999.

Greg Petesch answered February 13th is the last day to request.

SEN. BISHOP stated he was amiable to it. They agreed they would try to work on a committee bill.

SEN. HALLIGAN indicated if **Deborah Smith** would agree to work on it, he thought that **Deborah** and **Greg Petesch** could put something together for draft purposes, let the committee see it, then take it back downstairs to make any changes.

SEN. BISHOP said he noticed a conflict few days ago, when someone voted on the Floor and he was going to write it down. It looked like a pretty sizeable conflict to him, "significant" and yet that person voted. Of course the way it turned out it wouldn't have changed the outcome whether he voted either way. Just how subjectively they feel they have a conflict they should disclose

or if they don't; they are acting in good faith. How is the committee or anybody going to sanction them, or punish them in any way, if they don't disclose it. It is tough.

Greg Petesch stated the real protection in the process here is that we are still small enough. Everybody knows everybody else's business. The issue that he recalls was in the **Senate** last session. This rule came into play for an exemption for personnel employed by certain small radio stations from wage and overtime requirements. As the bill was introduced, it was a general exemption, as the bill went through the process it keep getting narrower and narrower and narrower, so that eventually it applied to only certain broad cast facilities employees. That was really the troublesome thing. As the bill is introduced it may be proper for you to vote on, maybe as it comes back from the 2nd body, it's not. Then people are going to accuse you of playing games. That is really where the difficulty lies.

Closing by Sponsor: **SEN. HALLIGAN** stated they will just let this bill **SB 12** sit and they will try to get something back hopefully by the end of the week so they can get this thing moving.

{Tape : 1; Side : A; Approx. Time Counter : 1 - 22}

ADJOURNMENT

Adjournment: 9:20 A.M.

SEN. AL BISHOP, Chairman

MARTHA MCGEE, Secretary

AB/MM

EXHIBIT (ets26aad)